FILE COPY.

Office Supreme Court U. S.
FILED
JAN 2 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 206.

THE CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, PETITIONER,

vs.

WILLIAM H. DENSON AND ROSA E. DENSON.

SUPPLEMENTAL BRIEF FOR RESPONDENTS.

OSCAR W. UNDERWOOD,
WILLIAM H. DENSON,
Counsel for Respondents.

(18,345.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 5376

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 206.

THE CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, PETITIONER,

vs.

WILLIAM H. DENSON AND ROSA E. DENSON.

SUPPLEMENTAL BRIEF OF OSCAR W. UNDERWOOD AND W. H. DENSON, COUNSEL FOR THE RESPONDENTS.

Without receding in any manner from the position taken in our former brief, that this whole contention is controlled by the decisions of the supreme court of Alabama as to the meaning and application of the constitution and statutes of that State, and that such decisions are conclusive upon the courts of the United States, and that the Federal courts will follow them, however the said courts may entertain as an independent opinion that the State courts may be in error as to the interpretation and application of such laws, we cite the following principles and authorities from other States

sustaining the position of the Alabama courts on the question under consideration:

It will be observed, the decisions cited from other States were pronounced on statutes similar to those of Alabama. Non-compliance with such laws of a State by a foreign corporation makes null, void, and non-enforceable all transactions and engagements entered into and business done in such State by such offending foreign corporation.

Heuni *vs.* Fidelity Bldng. and Loan Ass'n, 87 Am. St. Rep., 519, 520.

Com. Mut. Fire Ins. Co. *vs.* Hayden, 83 Am. St. Rep., 545, 546, 547.

Swing *vs.* Munson, 71 Am. St. Rep., 772, 774, 775, 776.

The offending corporation cannot defeat the operation and effect of such laws and give validity to the transaction by the parties stipulating that their contract shall be construed in reference to the laws of another State.

Heuni *vs.* Fidelity Bldng. & Loan Ass'n, 87 Am. St. Rep., 519, 520, 521.

Com. Mut. Fire Ins. Co. *vs.* Hayden, 83 Am. St. Rep., 545, 546.

The transaction in the case at bar was unquestionably "doing business" in Alabama, and was a flagrant violation of the constitution and statutes of that State.

In such case the transaction cannot be enforced by any court sitting in Alabama.

It is not a question whether the contract was entered into and consummated in Tennessee, and it was a binding and lawful undertaking under the laws of Tennessee and could

be enforced under the laws of any State, upon the principle that a contract valid under the laws of the jurisdiction where made is valid and enforceable anywhere; but the question here is whether any court sitting in Alabama will enforce a contract plainly, squarely, and admitted to be in violation of the laws and public policy of Alabama, it makes no difference where the contract was made.

This last proposition is an exception to the general principle that a contract valid under the laws of the jurisdiction where made is valid everywhere and will be enforced. This rule depends upon a principle of comity; but no State or nation will enforce any contract in its own courts, no difference wherever it may be made, that is in disregard or violation of the public policy or positive legislation of such State.

Gist *vs.* West. Un. Tel. Co., 55 Am. St. Rep., 763, 770, 771, and note, page 774.

Swing *vs.* Munson, 71 Am. St. Rep., 772, 776.

Seamans *vs.* Temple Co., 55 Am. St. Rep., 457, 460.

Cowan *vs.* London Assn. Corp., 55 Am. St. Rep., 535.

Rose *vs.* Kimberly, 46 Am. St. Rep., 855, 856.

It may be insisted that the United States courts are not domestic courts and the enforcement of the transaction in this case is not an enforcement by the State courts of Alabama, and therefore the exception does not apply. It is true the Federal courts are not domestic courts of the State in which they exist and exercise their jurisdiction, but there can be no controversy as to their NOT BEING FOREIGN COURTS.

These courts exist in Alabama, and in innumerable instances they sit to enforce the laws of Alabama.

The United States are in no sense a foreign government to the State of Alabama.

The Supreme Court of the United States have decided that no court sitting in Alabama will enforce such a contract.

113 U. S. Rep.

The following cited cases are very like, in some of their facts, the case at bar, showing that what was done by the Chattanooga corporation in Alabama was "doing business" in Alabama and a violation of the laws of Alabama:

Swing *vs.* Munson, 71 Am. St. Rep., 772.

Heuni *vs.* Fidelity Bldng., &c., Assn., 87 Am. St. Rep., 519–521.

Seamans *vs.* Temple Co., 55 Am. St. Rep., 457.

Cowan *vs.* London Assn. Corp., 55 Am. St. Rep., 536.

In addition to the authorities cited on former brief, showing the laws under consideration are *police regulations*, we cite the following:

Com. *vs.* Vrooman, 44 Am. St. Rep., 603.

Heuni *vs.* Fidelity Bldng., &c., Ass'n, 87 Am. St. Rep., 519.

Com. Mutual Fire Ins. Co. *vs.* Hayden, 83 Am. St. Rep., 546.

Swing *vs.* Munson, 71 Am. St. Rep., 772, 776, *et seq.*

Powell *vs.* Pennsylvania, 127 U. S., 678–699.

OSCAR W. UNDERWOOD,
W. H. DENSON,
Counsel for Respondents.